

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION**

<b>Penn, LLC, et al,</b>	:	
	:	<b>Case No. 2:10-CV-0993</b>
<b>Plaintiffs,</b>	:	
	:	<b>Judge Frost</b>
<b>v.</b>	:	
	:	<b>Magistrate Judge Kemp</b>
<b>Prosper Business Development Corporation, et al,</b>	:	
	:	
<b>Defendants.</b>	:	

**DEFENDANT PROSPER BUSINESS DEVELOPMENT CORPORATION'S  
MOTION TO COMPEL**

Pursuant to *Fed. R. Civ. P.* 37(a)(3)(B)(iii)-(iv), Defendant Prosper Business Development Corporation ("Prosper") seeks an Order compelling Plaintiff Penn, LLC ("Penn") to provide complete answers to Prosper's Interrogatories and complete responses to Prosper's Request for Production of Documents. At a meet and confer conference held between counsel for Prosper and Penn on October 12, 2011, Penn agreed to provide such responsive answers and documents, but has yet to do so. A memorandum in support is attached hereto.

Respectfully submitted,

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### **MEMORANDUM IN SUPPORT**

On June 24, 2011, Penn and Prosper held their Rule 26(f) conference. On that same day, and after the conference was completed, Prosper served Penn with Interrogatories and Request for Production of Documents. Penn's discovery responses were initially due on July 25, 2011. On July 19, 2011, Penn requested and was granted a five-week extension (to August 29, 2011) to respond to Prosper's discovery. On September 2, 2011, Penn requested and was provided an additional ten days to respond to Prosper's requests. On September 12, 2011, Penn provided its discovery responses. *See* Penn's responses to Prosper's Interrogatories and Request for Production of Documents, attached as Exhs. 1 and 2.

On September 30, 2011 and October 7, 2011 respectively, Prosper addressed Penn's rampant shortcomings in its discovery responses. *See* Arnold letters attached as Exhs. 3 and 4. In responding to Prosper's Interrogatories, Penn failed to: (1) identify its past and current members; (2) provide any specific factual basis for its affirmative defenses; and (3) provide clear answers to support its claims. Similarly, Penn's responses to Prosper's document requests did not identify what documents were responsive to which request.

On October 12, 2011, the parties met and conferred as required by *Fed. R. Civ. P.* 37(a)(1) and *S.D. Ohio Civ. R.* 37.2. As a result of that meet and confer, Penn agreed to provide supplemental responses.<sup>1</sup> Clifford email, attached as Exh. 5. Specifically, Penn agreed to provide additional answers to Interrogatories 5, 8-12, 14, 15, and 25. *Id.* Penn also agreed to identify which previously produced documents were responsive to Prosper's document requests.

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<sup>1</sup> Prosper is not satisfied with Penn's other discovery responses, but first wanted to address those requests that Penn had previously agreed to provide. Prosper is not precluded from pursuing later court intervention on other matters if necessary.

Id. Finally, Penn's counsel indicated that there were supplemental documents that had yet to be produced. Id.

The parties agreed that Penn's counsel could have until October 31, 2011 to supplement its discovery responses. Id. On October 31, 2011, Penn asked for another extension until November 4, 2011, which was granted. Arnold Email, attached as Exh. 6. Now, notwithstanding all of the delays and extensions granted to date, Penn has yet to provide supplemental responses to Interrogatories 5, 8-12, 14, 15, or 25. Nor has Penn produced any supplemental documents or indicated which documents are responsive to Prosper's discovery requests. As a result, Prosper requests an order compelling Penn's responses.

Federal Civil Rules 26, 33, and 34 require interrogatory answers and the production of documents regarding any matter that is relevant to a party's claim or defense. Through its agreement to respond to certain interrogatories and document requests, Penn acknowledged the relevancy of those discovery requests, and thus the Court's analysis here is straightforward. *See Bricker v. R & A Pizza, Inc.*, 2011 WL 1990558 (S.D. Ohio 2011) (holding "to the extent that the Brickers have agreed to produce income verification dating from the termination of their employment with R & A Pizza but have not done so, the motion to compel will be granted.")<sup>2</sup> Penn must provide supplemental answers and documents as required by the Federal Civil Rules and Penn's prior agreement.

Therefore, Prosper is entitled to an order compelling Penn to: (1) provide a list of its members from 2000 to the present with their respective membership interest as requested by Interrogatory 5; (2) fully and completely answer Interrogatories 8-12, 14, 15, and 25; (3) identify

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<sup>2</sup> Attached as Exh. 7.

the documents that are responsive to Prosper's document requests; and (4) provide supplemental documents identified in the parties' October 12, 2011 conference.

Respectfully submitted,

/s/ James E. Arnold

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 1st 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following parties:

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